

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Mulinelli (S)	Team: Squad #1	CCRB Case #: 201607176	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/14/2016 12:10 AM	Location of Incident: St. Paul's Place and Washington Avenue; PSA 7 stationhouse.	Precinct: 42	18 Mo. SOL 2/14/2018	EO SOL 2/14/2018	
Date/Time CV Reported Sun, 08/14/2016 1:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/22/2016 12:20 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Felix Baez	04759	953654	PSA 7
2. SGT Eric Berrios	00337	921149	PSA 7
3. SGT Miguel Frias	1309	930184	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.POM Felix Baez	Abuse: At St. Paul's Place and Washington Avenue in the Bronx, Police Officer Felix Baez stopped § 87(2)(b)	
B.SGT Miguel Frias	Abuse: At St. Paul's Place and Washington Avenue in the Bronx, Sergeant Miguel Frias stopped § 87(2)(b)	
C.SGT Miguel Frias	Abuse: At St. Paul's Place and Washington Avenue in the Bronx, Segreant Miguel Frias interfered with § 87(2)(b) use of a recording device.	
D.SGT Miguel Frias	Abuse: At St. Paul's Place and Washington Avenue in the Bronx, Sergeant Miguel Frias searched § 87(2)(b)	
E.SGT Miguel Frias	Abuse: At St. Paul's Place and Washington Avenue in the Bronx, Sergeant Miguel Frias searched § 87(2)(b) recording device.	
F.SGT Miguel Frias	Abuse: At St. Paul's Place and Washington Avenue in the Bronx, Sergeant Miguel Frias deleted information on § 87(2)(b) electronic device.	
G.POM Felix Baez	Abuse: At St. Paul's Place and Washington Avenue in the Bronx, Police Officer Felix Baez damaged § 87(2)(b) property.	
H.POM Felix Baez	Discourtesy: En route to the PSA 7 stationhouse, Police Officer Felix Baez spoke discourteously to § 87(2)(b)	
I.POM Felix Baez	Force: At the PSA 7 stationhouse, Police Officer Felix Baez tightly handcuffed § 87(2)(b)	
J.POM Felix Baez	Abuse: At the PSA 7 stationhouse, Police Officer Felix Baez refused to provide his name and shield number to § 87(2)(b)	
K.SGT Miguel Frias	Abuse: At the PSA 7 stationhouse, Sergeant Miguel Frias refused to provide his name and shield number to § 87(2)(b)	
L.POM Felix Baez	Discourtesy: At the PSA 7 stationhouse, Police Officer Felix Baez spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
M.SGT Eric Berrios	Abuse: At the PSA 7 stationhouse, Sergeant Eric Berrios threatened to arrest § 87(2)(b)	

Case Summary

This case was originally assigned to Inv. Andrew Bailyn on August 22, 2016. It was reassigned to Inv. Mulinelli on December 16, 2016.

On August 14, 2016, at approximately 12:10 a.m., PO Felix Baez and Sgt. Miguel Frias, of the PSA 7 Anti-Crime Team, spotted § 87(2)(b) in the area of the Webster-Butler Houses NYCHA complex, which is in the vicinity of East 171st Street and Washington Avenue in the Bronx. After walking through the complex, § 87(2)(b) was stopped by PO Baez and Sgt. Frias in the vicinity of St. Paul's Place and Washington Avenue, approximately one block from where he had first been observed by the officers (**Allegations A and B**). § 87(2)(b) began recording the incident on his cell phone, but Sgt. Frias took the phone from his hand (**Allegation C**). The officers asked § 87(2)(b) for his ID, which he provided without additional prompting. PO Baez made a phone call, and Sgt. Frias ordered § 87(2)(b) to place his bag on the ground. Sgt. Frias then allegedly searched § 87(2)(b) bag, which contained three bottles of alcohol (**Allegation D**). Sgt. Frias, still possessing § 87(2)(b) phone, allegedly searched the phone for approximately 30 seconds before returning it to § 87(2)(b) (**Allegation E**). The phone reportedly no longer contained video footage of the incident (**Allegation F**).

Sgt. Frias ordered § 87(2)(b) to place his hands on the hood of the RMP. § 87(2)(b) found the hood of the RMP to be hot and placed a towel on the hood to alleviate the heat from his hands as he was about to be handcuffed. PO Baez allegedly pushed § 87(2)(b) hand holding the towel off of the hood, knocking the cell phone out of § 87(2)(b) hand and cracking the screen (**Allegation G**). After this, PO Baez's phone lit up red, and PO Baez informed § 87(2)(b) that he was identified as a witness in an investigation and that the officers had to bring him to the PSA 7 stationhouse. The officers then handcuffed § 87(2)(b) without issue.

The officers transported § 87(2)(b) to the PSA 7 stationhouse. In transport, § 87(2)(b) complained of the tightness of his handcuffs. PO Baez allegedly told § 87(2)(b) to "shut the fuck up" (**Allegation H**). Upon arriving at the stationhouse, § 87(2)(b) requested that his handcuffs be loosened. PO Baez allegedly tightened both handcuffs instead of loosening them (**Allegation I**). § 87(2)(b) was escorted into the stationhouse and placed in a cell.

§ 87(2)(b) was released and issued a summons by PO Baez for the offense of § 87(2)(b). As § 87(2)(b) was exiting the stationhouse, he asked PO Baez and Sgt. Frias for their names and shield numbers. Neither officer provided this information (**Allegations J and K**). PO Baez allegedly responded, "Get the fuck out of here. Get the fuck up out of here before we make things worse for you" (**Allegation L**). § 87(2)(b) left the stationhouse and went to a deli across the street. He left his bag there and returned to the stationhouse.

When § 87(2)(b) returned to the stationhouse, he spoke with Sgt. Eric Berrios, who was working the desk that night. § 87(2)(b) asked for the shield numbers of PO Baez and Sgt. Frias, to which Sgt. Berrios allegedly responded, "If I were you, I'd get out of here because if they come back, it will be bad." Sgt. Berrios also mentioned something about trespassing. § 87(2)(b) interpreted this as a threat of arrest (**Allegation M**). Sgt. Berrios ultimately provided the names of

PO Baez and Sgt. Frias but only provided one of the two shield numbers. § 87(2)(b) then left the stationhouse.

No video footage was available for this incident.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation § 87(2)(g)
- As of January 18, 2017, no Notice of Claim has been filed in regard to this incident [01 Board Review].
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the second CCRB case involving § 87(2)(b) § 87(2)(b)
- This is the second CCRB case filed against PO Baez in his four year tenure. In case 201507072, PO Baez was the subject of a discourtesy allegation, which was closed as unsubstantiated. This allegation also involved the use of the word “fuck.”
- This is the eighth CCRB complaint filed against Sgt. Frias in his 14 years as a member of the service. In 2004, it was alleged that Sgt. Frias refused to provide his name and shield number, and that allegation was substantiated. Since 2007, allegations of a strip-search, retaliatory summons, stop, and physical force have also been substantiated against him. It has not previously been alleged that Sgt. Frias interfered with an individual’s use of a recording device or searched such a device.
- This is the first CCRB complaint filed against Sgt. Berrios in his 18 year tenure.

Potential Issues

- § 87(2)(g)
- During the recorded portion of his first CCRB interview, Sgt. Frias stated that his memo book was confiscated by the Internal Affairs Bureau (IAB) for an unrelated investigation. Requests to the 52nd Precinct were returned noting that Sgt. Frias had lost the memo book in question. Further, following a request to IAB, Sgt. John Macari stated that IAB did not possess Sgt. Frias’ memo book.
- PO Baez was interviewed twice in order to obtain additional information. He was interviewed by Inv. Bailyn on October 18, 2016 and by Inv. Mulinelli on February 2, 2017.

Findings and Recommendations

Allegation A – Abuse of Authority: At St. Paul’s Place and Washington Avenue in the Bronx, Police Officer Felix Baez stopped § 87(2)(b)

Allegation B – Abuse of Authority: At St. Paul’s Place and Washington Avenue in the Bronx, Sergeant Miguel Frias stopped § 87(2)(b)

§ 87(2)(b) testified that he had walked from Van Cortlandt Park, located in the vicinity of Broadway and West 242nd Street in the Bronx, to Webster Avenue and East 170th Street. § 87(2)(b) possessed approximately seven grams of marijuana, which was in a jewelry bag inside of his book bag. Although § 87(2)(b) had smoked some of this marijuana at Van Cortlandt Park, he did not smoke it on the street or remove it from his bag at any point during his travels from the park to the area of Webster Avenue and East 170th Street. § 87(2)(b) did not believe that the scent of the marijuana would have been detectable outside the bag because the marijuana was not of an especially exotic or pungent variety.

After arriving in the area of Webster Avenue and East 170th Street, § 87(2)(b) stopped at a liquor store on Webster Avenue, where he purchased a bottle of Moscato wine and a half pint of Hennessy. § 87(2)(b) also had in his bag an opened bottle of Moscato wine, which was approximately half full. § 87(2)(b) clarified that he had not imbibed any alcohol on the street, only consuming it earlier at the family gathering at Van Cortlandt Park. § 87(2)(b) described himself as “a little bit” intoxicated.

As § 87(2)(b) walked through the Webster-Butler NYCHA complex on his way toward a friend’s apartment, he waved to a few individuals who were sitting on benches inside the complex. He did not shake hands or exchange items with anyone, nor did he stop to greet anyone. § 87(2)(b) continued walking and crossed a bridge over Park Avenue which connects Webster Avenue to Washington Avenue. When § 87(2)(b) reached the intersection of Washington Avenue and St. Paul’s Place, two plainclothes officers approached him in an unmarked brown Ford Crown Victoria. § 87(2)(b) provided the first officer’s name as “Baez.” The investigation identified the abovementioned officers as PO Baez and Sgt. Frias.

According to § 87(2)(b) the officers instructed him to make his hands visible and asked him where he was coming from. PO Baez informed § 87(2)(b) that he had been recently observed speaking to someone who was under investigation. § 87(2)(b) clarified that he had not conversed with anyone because he was on his cell phone during the entire trip from Van Cortlandt Park. The officers asked § 87(2)(b) for his ID and instructed him to place his knapsack on the ground. § 87(2)(b) complied with both requests without additional prompting. Upon checking § 87(2)(b) ID, PO Baez discovered that there was an active I-Card for § 87(2)(b). § 87(2)(b) was handcuffed and transported to the PSA 7 stationhouse [04-05 Board Review].

PO Baez testified that he and Sgt. Frias were working an Anti-Crime assignment and patrolling in the area of the Webster-Butler houses NYCHA complex prior to the incident. The officers were stationary in their RMP, an unmarked silver Ford Crown Victoria. PO Baez was the driver. It was dark outside, but there was lighting in the development. The officers were parked about 15 feet from a group of individuals who were making loud noise and were known to conduct marijuana

sales. The area is also a high crime area known for drug activity related to marijuana, cocaine, and heroin, as well as shootings and robberies. PO Baez also asserted that the individuals were making furtive movements such as looking around. PO Baez did not remember what else these men were doing due to the length of time between the incident and his second CCRB interview, approximately four-and-a-half months.

As the officers observed the group, § 87(2)(b) walked past the individuals, stopped, turned around, gave one of the individuals a handshake, and then walked away. Based on their observations of this handshake, the officers believed that they had witnessed a hand-to-hand transaction of some kind. PO Baez did not recall if he or Sgt. Frias was the first to observe this interaction. PO Baez did not observe what may have been transferred in the alleged exchange between § 87(2)(b) and the other individual. PO Baez did not observe anything in § 87(2)(b) hands prior to the handshake. He also stated that he observed nothing in § 87(2)(b) hands after the handshake, though he attributed the lack of observation to the 15 feet between himself and § 87(2)(b). When asked if there was anything about the handshake which suggested to him that it was not innocuous, PO Baez stated that the fact that § 87(2)(b) had walked past this individual before turning back was a factor.

PO Baez and Sgt. Frias observed § 87(2)(b) for about five more minutes before stopping him. PO Baez did not remember whose decision it was to make the stop. During those five minutes, § 87(2)(b) had no additional interactions with the individuals in the group, and PO Baez did not suspect that § 87(2)(b) had committed any additional infractions. Aside from the above-described suspected hand-to-hand transaction, there were no additional factors leading to the decision to stop § 87(2)(b). The officers were not able to stop § 87(2)(b) immediately because he was in the middle of the development. As such, they waited until he exited into the street and then executed the stop on Washington Avenue, possibly across from a church. The investigation determined that a church lies at the intersection of Washington Avenue and St. Paul's Place.

According to PO Baez, the officers exited their RMP, and PO Baez was the first to approach. He asked § 87(2)(b) to see his hands, a request he repeated three times. PO Baez considered § 87(2)(b) to be stopped at this time. He was not free to leave because the officers needed to determine whether a transaction had occurred. PO Baez believed that § 87(2)(b) was intoxicated based on the scent of alcohol on his breath, his unsteady gait, and his lack of cooperation with officers' requests. Further, at the time of the stop, PO Baez observed § 87(2)(b) wearing an over-the-shoulder satchel, which closed with a flap. The flap was halfway open, exposing the tops and necks of two pink wine bottles. One of the bottles was sealed, while the other had its cork exposed and appeared to be opened. At an unspecified time, PO Baez determined the opened bottle to be half full. Based on these observations, PO Baez assumed that § 87(2)(b) had been reaching into the bag and drinking from the opened bottle, though he never observed § 87(2)(b) remove the bottles from the bag or consume any alcohol.

§ 87(2)(b) clenched his fists, asked the officers, "What the fuck did I do?" and also stated, "I didn't do shit." PO Baez asserted that § 87(2)(b) was aggressive and seemed "a little off," and he cited these reasons creating safety concerns which led to the handcuffing of § 87(2)(b).

PO Baez did not remember whether he or Sgt. Frias asked § 87(2)(b) where he was going or where he had come from, though he asserted that he had already seen where § 87(2)(b) was coming from. According to PO Baez, § 87(2)(b) refused to provide his ID prior to being handcuffed. When the officers finally obtained his ID, PO Baez checked it on his Department-issued smartphone and determined that § 87(2)(b) had an active I-Card. As the nature of the I-Card was unclear, the officers transported § 87(2)(b) to the PSA 7 stationhouse. PO Baez ultimately determined that § 87(2)(b) was not involved in a hand-to-hand transaction when he searched him and his bag in front of the stationhouse desk and recovered no contraband.

PO Baez's memo book stated that § 87(2)(b) was stopped for drinking alcohol in public at 171st Street and Washington Avenue. The summons he later issued stated that § 87(2)(b) possessed an open container of alcohol and made no mention of public consumption. When asked to account for this discrepancy, PO Baez stated that the offenses are one and the same, and that both refer to the offense of 10-125 (b). PO Baez stated that he uses the aforementioned description of the offense interchangeably. He confirmed that he never observed § 87(2)(b) drinking the alcohol [06-09 Board Review].

Sgt. Frias' § 87(2)(g) stated that the officers were parked in their RMP inside of a parking lot within the courtyard of the NYCHA Webster Houses. In his initial statement to the CCRB, Sgt. Frias stated that the officers were observing a group of men known for marijuana sales from a distance of about 25 to 30 feet. However, this interview was not recorded due to a Konexx failure, and in his second interview he was unable to describe the distance in any more detail than to say it was "a few feet" away. Although the incident occurred at night, there were mobile spotlights nearby, and Sgt. Frias was able to see the actions of the group of men. No object blocked the officers' view.

In his first interview, Sgt. Frias stated that, as the officers observed the group, they saw § 87(2)(b) walk past said group. § 87(2)(b) then turned around and approached the group, giving one of the individuals, who Sgt. Frias described as a black male, a quick handshake. Sgt. Frias did not remember any additional descriptive details for the individual with whom § 87(2)(b) interacted. Sgt. Frias described this interaction slightly differently in his second interview, calling the action handshake-like motion a "pound" and stating that § 87(2)(b) clasped the other man's hand with his right hand while motioning in the area of his waist with his left hand.

Also in his first interview, Sgt. Frias asserted that the previously described interaction took place in the middle of the group, and Sgt. Frias believed, based on his experience and observations in previous but unrelated arrest scenarios, that other individuals in the group were attempting to hide § 87(2)(b) and the other individual. In his second interview, Sgt. Frias made no mention of § 87(2)(b) passing and then returning to the group. Rather, he stated that § 87(2)(b) approached one of the individuals straight away. He also did not explicitly state that any members of the group actively attempted to hide the activities of § 87(2)(b) and the other individuals. Although he stated that drug dealers often attempt to disguise their actions by hanging out in a group, when asked in his second interview what the other group members were doing, he stated that they were doing nothing aside from loitering.

Sgt. Frias consistently stated that, following the handshake, § 87(2)(b) walked down St. Pauls' Place and past Park Avenue. Based on the observations described above, both Sgt. Frias and PO Baez believed that they had witnessed a hand-to-hand drug transaction. Sgt. Frias was also consistent in both interviews in stating that he believed this to be a drug transaction because normally people who greet each other stop and have a brief conversation. In this instance, § 87(2)(b) simply gave a handshake to the man on the corner, slightly bumping chests with him in the fashion of a "thug hug" and kept walking. § 87(2)(b) and the other man did not speak to each other. Sgt. Frias believed § 87(2)(b) to be the buyer and the man on the corner to be the seller. However, Sgt. Frias testified in both interviews that he did not observe any objects exchanged during the transaction. He did not see if § 87(2)(b) had anything in his hand afterward.

According to Sgt. Frias' testimony in his first interview, he and PO Baez discussed their observations when PO Baez mentioned a hand-to-hand transaction. As such, Sgt. Frias believed that PO Baez had witnessed the same interaction and had come to the same conclusion regarding its nature. Both officers decided to stop § 87(2)(b) following this discussion.

In his second interview, Sgt. Frias stated that he and PO Baez did not discuss what actions to take after witnessing the suspected drug transaction. Rather, Sgt. Frias assumed that PO Baez had seen it because they were both looking at the same area as the events unfolded. Regardless, it was decided that § 87(2)(b) would be stopped instead of the alleged seller because, as the suspected buyer, § 87(2)(b) was a safer bet to have drugs on him at the moment. No additional observations or factors influenced the officers' decision to stop § 87(2)(b).

The officers drove to the vicinity of St. Paul's Place and Washington Avenue, where they encountered § 87(2)(b). They had lost sight of him for about one minute prior to encountering him there. Sgt. Frias did not observe § 87(2)(b) in possession of an open container of alcohol, though he was later informed of the presence of such a container by PO Baez. Sgt. Frias did not remember when PO Baez alerted him of this.

Sgt. Frias ordered § 87(2)(b) to display his hands and provide his ID. § 87(2)(b) complied and provided an EBT card as ID. Despite his compliance, § 87(2)(b) was agitated. He tensed his arms and body, and he told the officers to leave him the fuck alone. § 87(2)(b) also questioned why he was being fucking stopped. Sgt. Frias corroborated PO Baez's testimony that an I-Card was discovered after checking § 87(2)(b) ID. He asserted that § 87(2)(b) was handcuffed after this discovery. The officers then transported him to the PSA 7 stationhouse [10, 18 Board Review].

An officer must have reasonable suspicion that an individual has committed, is committing, or is about to commit a felony or misdemeanor in order to stop said individual. (*People v. De Bour*, 40 N.Y.2d 210 (1976)). In a drug-prone location, "tell-tale signs of drug activity," such as the furtive transfer of money or glassine envelopes, steering of potential buyers, concealment of unidentified objects, or flight, can generate reasonable suspicion. (*People v. King*, 200 A.D.2d 487 (1994)). However, as noted in *De Bour*, innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand, and a stop cannot be justified by subsequently acquired suspicion resulting from the stop. *People v. Loper* 115 A.D.3d 875 (2014) held that an

experienced narcotics officer had no reasonable suspicion for his investigative stop when he did not see what was exchanged between two men in an alleged hand-to-hand transaction and did not see money pass between the two [11-13 Board Review].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority: At St. Paul’s Place and Washington Avenue in the Bronx, Sergeant Miguel Frias interfered with § 87(2)(b) use of a recording device.

Allegation E – Abuse of Authority: At St. Paul’s Place and Washington Avenue in the Bronx, Sergeant Miguel Frias searched § 87(2)(b) recording device.

Allegation F – Abuse of Authority: At St. Paul’s Place and Washington Avenue in the Bronx, Sergeant Miguel Frias deleted information on § 87(2)(b) electronic device.

§ 87(2)(b) testified that he used his cell phone to record about 20 seconds of the incident following the officers’ approach. As § 87(2)(b) was in the process of recording, Sgt. Frias grabbed the phone from him and thumbed through it via the screen for no more than 30 seconds. When Sgt. Frias returned the phone to § 87(2)(b) the phone no longer contained any video. § 87(2)(b) believed that Sgt. Frias was in the process of deleting the video when he observed Sgt. Frias thumbing through it. § 87(2)(b) Dropbox account was not functioning properly at the time of the incident. Had it been functional, the video would have been uploaded automatically [04-05 Board Review].

Sgt. Frias did not remember if § 87(2)(b) held his cell phone in his hand prior to the stop or if he took it out after he was stopped. In his first interview, Sgt. Frias acknowledged that he removed the cell phone from § 87(2)(b) hand and placed it onto the hood of the RMP for the purpose of handcuffing § 87(2)(b). However, in his second interview, Sgt. Frias denied remembering whether he removed a phone or recording device from § 87(2)(b) and he later maintained that he was not in possession of § 87(2)(b) phone at any point.

At this point in the sequence of events, PO Baez had already informed Sgt. Frias of the open container of alcohol, and it was also discovered that § 87(2)(b) had an I-Card of some kind. Due to the fact that § 87(2)(b) was considered to be under arrest, he was not permitted to hold onto his belongings. Sgt. Frias denied observing § 87(2)(b) attempt to record the incident. He also denied that either he or PO Baez interfered with § 87(2)(b) ability to record. According to Sgt. Baez, § 87(2)(b) made no complaints of an officer having done so. Sgt. Frias denied searching § 87(2)(b) phone or deleting any information from it. When asked if he believed § 87(2)(b) phone to contain evidence of criminality, Sgt. Frias answered negatively [10, 18 Board Review].

PO Baez acknowledged that § 87(2)(b) was using his phone at the time of the stop, and that he may have been on a call. PO Baez did not remember how the call or use of the device was terminated, but eventually § 87(2)(b) was off of the phone. When asked if he or Sgt. Frias took § 87(2)(b) phone from him, PO Baez stated that he did not remember who took the phone, though he believed that the phone was removed from § 87(2)(b) for the purpose of handcuffing. PO Baez did not remember if § 87(2)(b) ever attempted to record video or if § 87(2)(b) informed officers that he was doing so. According to PO Baez, the phone was returned to § 87(2)(b) after he was handcuffed. PO Baez made no mention of any officer searching the phone [06-07 Board Review].

Officers acknowledged taking § 87(2)(b) phone from him during the incident, but both denied observing or remembering § 87(2)(b) recording the incident. The officers also asserted that the phone was removed from § 87(2)(b) hand for the purpose of handcuffing, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

Allegation D – Abuse of Authority: At St. Paul’s Place and Washington Avenue in the Bronx, Sergeant Miguel Frias searched § 87(2)(b)

According to § 87(2)(b) both Sgt. Frias and PO Baez ordered him to place his knapsack on the ground after he provided his ID. Sgt. Frias then opened § 87(2)(b) knapsack, exposing the three previously described bottles of alcohol within. The officers did not ask § 87(2)(b) for permission to search his bag. An officer looked through § 87(2)(b) bag, which § 87(2)(b) described as “ruffled through it real quick.” § 87(2)(b) believed that Sgt. Frias was the officer who searched his bag because PO Baez was on his phone at the time of the search [04-05 Board Review].

As noted above, Sgt. Frias testified that PO Baez notified him of the presence of an open container of alcohol, though he denied that PO Baez specified its location. In addition, Sgt. Frias did not remember when in the sequence of events PO Baez provided this information. Sgt. Frias denied looking inside of or searching § 87(2)(b) backpack. Sgt. Frias did not remember if the bag was open or completely shut, or if § 87(2)(b) was asked to remove it from his back at any time. He did not remember whether the book bag was ever on the ground or if it was opened while at the scene. Given that § 87(2)(b) was considered to be under arrest following the discovery of the alcohol and I-Card, § 87(2)(b) belongings would have been held in the front seat of the RMP. Sgt. Frias did not remember if he was the driver or recorder of the RMP that day. He testified that he did not observe the bottle of alcohol, which he described as wine, until PO Baez showed it to him at the stationhouse. He revealed that § 87(2)(b) belongings were procedurally searched prior to him being placed into a cell [10, 18 Board Review].

PO Baez testified that § 87(2)(b) wore an over-the-shoulder satchel at the time of the stop. Said bag closed with a flap, though the flap was about halfway open, leaving the necks of two pink glass wine bottles exposed. As noted above, the cork of one bottle was exposed, while the other was sealed. The opened bottle was half full. PO Baez believed § 87(2)(b) to be guilty of possessing an opened container of alcohol immediately upon making this observation. PO Baez reported that he made this observation visually and did not physically search inside the bag. Rather, he later frisked the outside of the bag as well as § 87(2)(b) waistband and legs prior to handcuffing § 87(2)(b). He did this for safety reasons and because it is procedurally appropriate to do so before placing an individual into the RMP. According to PO Baez, no officer physically searched inside of § 87(2)(b) bag at the scene [06-07 Board Review].

As discussed at various points above, § 87(2)(b) was summonsed for § 87(2)(b) [09 Board Review].

§ 87(2)(g)

§ 87(2)(g)

Allegation G – Abuse of Authority: At St. Paul’s Place and Washington Avenue in the Bronx, Police Officer Felix Baez damaged § 87(2)(b) property.

§ 87(2)(b) testified that Sgt. Frias returned his phone to him as he stood at the front of the RMP. Sgt. Frias then ordered § 87(2)(b) to place his hands on its hood. § 87(2)(b) complied but found the hood of the RMP to be hot, so he placed a towel on the hood as a barrier between the hot metal and his hands. § 87(2)(b) felt that he was about to be handcuffed at that moment. § 87(2)(b) was still holding his cell phone and placed it onto the towel. PO Baez then pushed § 87(2)(b) hand, which was holding the towel, off of the hood of the car, knocking the cell phone out of § 87(2)(b) hand and cracking the screen. Immediately afterward, § 87(2)(b) saw PO Baez’s phone light up red. PO Baez informed § 87(2)(b) that he was wanted as a witness in an investigation, and he was then handcuffed [04-05 Board Review].

PO Baez stated that the officers intended to handcuff § 87(2)(b) because he was not compliant with their requests for his ID and because he was “moving around too much.” PO Baez did not remember in detail how § 87(2)(b) was moving. As such, the officers brought § 87(2)(b) to the hood of their RMP for the purpose of handcuffing. § 87(2)(b) placed his phone on its hood, and it slid off and fell to the ground as the officers handcuffed him. PO Baez denied knocking the phone or doing anything to cause § 87(2)(b) phone to fall to the ground. The phone was recovered from the ground by PO Baez, who returned it to § 87(2)(b). PO Baez made no mention of any damage or complaints of damage [06-07 Board Review].

In his first interview, Sgt. Frias denied that § 87(2)(b) placed his hands onto the hood of the RMP. In his second, he stated that he did not remember whether this happened. In his second interview, Sgt. Frias acknowledged that § 87(2)(b) phone was on the hood of the RMP. However, he denied that he or PO Baez caused § 87(2)(b) phone to fall to the ground. According to Sgt. Frias, the phone also did not fall as a result of any actions by PO Baez. Sgt. Frias did not hear § 87(2)(b) claim that any officer had damaged his cell phone, and he never observed any damage to the device [10, 18 board Review].

There was no documentation generated for § 87(2)(b) phone as he was ultimately summonsed in lieu of arrest.

§ 87(2)(g)

§ 87(2)(g)

Allegation H – Discourtesy: En route to the PSA 7 stationhouse, Police Officer Felix Baez spoke discourteously to § 87(2)(b)

Allegation I – Force: At the PSA 7 stationhouse, Police Officer Felix Baez tightly handcuffed § 87(2)(b)

§ 87(2)(b) reported that he was placed into the RMP without resistance and then transported to the PSA 7 stationhouse. During transport, § 87(2)(b) complained to the officers that the handcuffs were too tight. Sgt. Frias responded that § 87(2)(b) would have to wait. The officers also told § 87(2)(b) that a detective would simply need to speak to him regarding the aforementioned person under investigation. § 87(2)(b) told the officers that he does not commit crimes, but one of the officers stated that § 87(2)(b) was lying. Both officers told § 87(2)(b) to, “Shut up,” and PO Baez specifically told § 87(2)(b) to “Shut the fuck up.”

After the RMP reached the stationhouse, § 87(2)(b) repeated his request for the officers to loosen the handcuffs, but PO Baez tightened both handcuffs instead of loosening them. § 87(2)(b) wrist immediately developed a painful sensation from his thumb to his index finger that made § 87(2)(b) physically wince. During a follow-up call on January 13, 2017, § 87(2)(b) revealed that he suffered from Carpal Tunnel Syndrome, which was exacerbated by his handcuffing [04-05 Board Review].

Several photos were taken of § 87(2)(b) wrists during his CCRB interview, which occurred one month after the incident, on September 15, 2016. While there were some raised bumps on one wrist, there did not appear to be any permanent scarring. It should be noted that § 87(2)(b) did not claim that the handcuffs pierced his skin, decreasing the likelihood of visible scarring [14 Board Review].

§ 87(2)(b) medical documents from § 87(2)(b) indicated that he complained of pain and numbness to his right wrist and right index finger. He reported that he was handcuffed four days prior to the visit. While not detailed, the report contained no mention of the handcuffs being adjusted or tightened during the incident [see Privileged Medical Documents].

PO Baez denied remembering whether § 87(2)(b) said anything while en route to the PSA 7 stationhouse. He did not remember if he or Sgt. Frias said anything to § 87(2)(b) during that time. PO Baez denied using the word “fuck” or any other profanity toward § 87(2)(b) during this incident. He did not remember § 87(2)(b) complaining that any officer had done so. PO Baez also denied tightening § 87(2)(b) handcuffs following a complaint about their tightness.

PO Baez maintained that neither he nor any other officer adjusted § 87(2)(b) handcuffs in any way after initially securing them [06-07 Board Review].

Sgt. Frias denied that § 87(2)(b) complained of the tightness of his handcuffs while in transport. According to Sgt. Frias, § 87(2)(b) did not complain of pain caused by his handcuffs at any point during the incident. Neither Sgt. Frias nor PO Baez told § 87(2)(b) to “shut the fuck up.” According to Sgt. Frias, neither officer tightened § 87(2)(b) handcuffs or attempted to adjust them [10, 18 Board Review].

Sgt. Berrios, who was assigned to the desk at the time § 87(2)(b) was brought into the stationhouse, did not remember if § 87(2)(b) complained about the tightness of his handcuffs. He did not witness or learn that any officer had adjusted § 87(2)(b) handcuffs in any way. § 87(2)(b) did not complain of pain to his wrists or pain or injuries stemming from any location [15 Board Review].

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Allegation J – Abuse of Authority: At the PSA 7 stationhouse, Police Officer Felix Baez refused to provide his name and shield number to § 87(2)(b)

Allegation K – Abuse of Authority: At the PSA 7 stationhouse, Sergeant Miguel Frias refused to provide his name and shield number to § 87(2)(b)

Allegation L – Discourtesy: At the PSA 7 stationhouse, Police Officer Felix Baez spoke discourteously to § 87(2)(b)

Allegation M – Abuse of Authority: At the PSA 7 stationhouse, Sergeant Eric Berrios threatened to arrest § 87(2)(b)

As noted above, § 87(2)(b) was released from the stationhouse with a summons. Upon being informed that he was free to leave, § 87(2)(b) asked PO Baez and Sgt. Frias for their names and shield numbers because he did not appreciate the incident which had just occurred. The officers then began acting in an intimidating manner, with PO Baez saying, “Get the fuck out of here. Get the fuck up out of here before we make things worse for you.” § 87(2)(b) asked to speak to a sergeant, at which time he was informed by an unspecified party that Sgt. Frias was, in fact, a sergeant. § 87(2)(b) left the stationhouse without receiving the officers’ information.

§ 87(2)(b) went to a deli across the street from the stationhouse, dropped his bag there, and then returned to the stationhouse. § 87(2)(b) then found Sgt. Berrios behind the desk, and he asked Sgt. Berrios for the shield numbers of PO Baez and Sgt. Frias. § 87(2)(b) did not see PO Baez or Sgt. Frias at the stationhouse at this time. Sgt. Berrios reportedly told § 87(2)(b) “If I were you, I’d get out of here because if they come back it will be bad.” § 87(2)(b) perceived this comment to be a threat of arrest and remembered hearing Sgt. Berrios use the word “trespassing” at some point. § 87(2)(b) grew upset, questioned the culture at PSA 7, and asked Sgt. Berrios

two to three more times for the names of PO Baez and Sgt. Frias. Sgt. Berrios provided § 87(2)(b) with both names but only one shield number. § 87(2)(b) then left the stationhouse.

During his CCRB interview, § 87(2)(b) provided PO Baez's name as "Baez," though he stated that he learned this name from the summons. He believed that Sgt. Frias' last name was "Berrios" [04-05 Board Review].

§ 87(2)(g) In his statement to IAB, he stated that he requested PO Baez's shield number, at which point PO Baez replied, "Shut the fuck up or you're going through the system" [18 Board Review].

PO Baez stated that he released § 87(2)(b) with a summons, which featured his tax ID number and shield number. After being released, § 87(2)(b) made statements such as, "Fuck you guys," and, "You guys ain't shit." He also stated, "Fuck all cops," and mentioned that the incident meant an "easy \$35,000" for him when he took the case to the CCRB. Although § 87(2)(b) was released, he remained in the stationhouse for some time. PO Baez asked § 87(2)(b) to leave. § 87(2)(b) complied after an unspecified amount of time. Prior to leaving the stationhouse, § 87(2)(b) asked PO Baez and Sgt. Frias for their names and shield numbers. PO Baez provided this information to § 87(2)(b) and also informed him that this information was on the summons. PO Baez did not remember if Sgt. Frias provided his information to § 87(2)(b) though he acknowledged that Sgt. Frias was nearby. PO Baez denied saying, "Get the fuck out of here," or, "Get the fuck up out of here before you make things worse." He denied using the word "fuck" or any other profanity in speaking with § 87(2)(b) and stated that he did not remember any officer doing so [06-07 Board Review].

§ 87(2)(g) Sgt. Frias did not remember if § 87(2)(b) requested his name and shield number at this time, or if he requested PO Baez's information. However, he acknowledged that he verbally provided his name and shield number at § 87(2)(b) request earlier at the scene of the initial stop. Sgt. Frias denied that he or PO Baez refused to provide their identifying information to § 87(2)(b). He also denied making or hearing the alleged discourteous statements or using any other profanity toward § 87(2)(b). Sgt. Frias denied witnessing any interaction between § 87(2)(b) and Sgt. Berrios because he had resumed patrol, but he later learned of § 87(2)(b) return to the stationhouse when he spoke with Sgt. Berrios. According to Sgt. Frias, the information he received indicated that § 87(2)(b) continued stating that he was going to sue the NYPD. He did not learn if Sgt. Berrios threatened to arrest § 87(2)(b) [10, 18 Board Review].

§ 87(2)(g) Sgt. Berrios testified that § 87(2)(b) spoke loudly and mentioned "free money," possibly about \$30,000, as he was escorted out of the stationhouse. § 87(2)(b) requested the names of the officers with whom he had interacted earlier at the scene. PO Baez was near § 87(2)(b) and provided his name verbally. Sgt. Berrios did not remember if § 87(2)(b) recorded this information in any way. He did not remember if Sgt. Frias was near § 87(2)(b) at the time this request was made. According to Sgt. Berrios, no officer refused to provide his name or shield number to § 87(2)(b) at this time.

Sgt. Berrios denied that any officer told § 87(2)(b) to, “Get the fuck out of here before you make things worse.” He did not remember if PO Baez responded to § 87(2)(b) comments about “free money.” Sgt. Berrios did not hear any officer use profanity toward § 87(2)(b) and § 87(2)(b) made no complaints in regard.

According to Sgt. Berrios, § 87(2)(b) exited the stationhouse with PO Baez but returned a short time later and asked Sgt. Berrios for one of the officer’s shield number again because he had forgotten it. Sgt. Berrios did not remember which officer this concerned. Neither PO Baez nor Sgt. Frias was present at this point, and Sgt. Berrios did not know where they had gone. Sgt. Berrios provided § 87(2)(b) with the officer’s name but did not provide their shield number because he did not know this information. § 87(2)(b) did not complain that he had been unable to obtain an officer’s identifying information.

Sgt. Berrios did not remember having any additional conversation with § 87(2)(b) though he estimated their interaction to have lasted five to ten minutes. § 87(2)(b) attempted to make a phone call at the end of the interaction, but Sgt. Berrios instructed him to do so outside. § 87(2)(b) left about five minutes later without incident. Sgt. Berrios did not tell § 87(2)(b) “if I were you, I’d get out of here, because if they come back it will be bad.” He did not inform § 87(2)(b) that he could be arrested for trespassing if he failed to comply. Sgt. Berrios denied mentioning the possibility that § 87(2)(b) could be arrested at any point and did not remember § 87(2)(b) complaining that any officer had threatened to arrest him [15 Board Review].

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Squad: 1

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date